

1 RONALD L. JOHNSTON (State Bar No. 057418)  
LAURENCE J. HUTT (State Bar No. 066269)  
2 SUZANNE V. WILSON (State Bar No. 152399)  
JAMES S. BLACKBURN (State Bar No. 169134)  
3 ARNOLD & PORTER LLP  
1900 Avenue of the Stars, 17th Floor  
4 Los Angeles, California 90067-4408  
Telephone: (310) 552-2500  
5 Facsimile: (310) 552-1191

6 Attorneys for Defendants  
7 VERISIGN, INC. and  
NETWORK SOLUTIONS, INC.  
8

9 UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA

11  
12 REGISTERSITE.COM, an Assumed  
Name of ABR PRODUCTS INC., a  
13 New York Corporation, et al.,

14 Plaintiffs,

15 v.

16 INTERNET CORPORATION FOR  
ASSIGNED NAMES AND  
17 NUMBERS, a California corporation;  
VERISIGN, INC., a Delaware  
18 Corporation; NETWORK  
SOLUTIONS, INC., a Delaware  
19 Corporation; ENOM, INC., a  
Washington Corporation; ENOM  
20 FOREIGN HOLDINGS  
CORPORATION, a Washington  
21 Corporation; and DOES 1-10,  
inclusive,

22 Defendants.  
23

Case No. CV 04-1368 ABC (CWx)

**OPPOSITION OF DEFENDANTS  
VERISIGN, INC. AND  
NETWORK SOLUTIONS, INC.  
TO PLAINTIFFS' REQUEST  
FOR JUDICIAL NOTICE IN  
CONNECTION WITH MOTION  
TO DISMISS FOR FAILURE TO  
STATE A CLAIM**

Date: July 12, 2004  
Time: 10:00 a.m.  
Courtroom: 680 – Roybal Fed. Bldg.  
Hon. Audrey B. Collins

24  
25  
26  
27  
28

1 Defendants VERISIGN, INC. (“VeriSign”) and NETWORK SOLUTIONS, INC.  
2 (“NSI”) submit this Opposition to Plaintiffs’ Request for Judicial Notice in connection  
3 with VeriSign and NSI’s pending Motion to Dismiss the First Amended Complaint for  
4 failure to state a claim for relief under Rule 12(b)(6).

5 Plaintiffs ask the Court to take judicial notice of a Corrected Memorandum of  
6 Points and Authorities in support of a Demurrer filed by VeriSign and NSI in *Smiley v.*  
7 *Internet Corp. for Assigned Names and Numbers*, Los Angeles Superior Court Case No.  
8 BC 254659. Plaintiffs’ Request is improper, and should be denied, for two reasons.

9 First, Plaintiffs’ judicial notice request is improper because they are asking the  
10 Court to take judicial notice of an unrelated state court document not merely for the fact  
11 that it *was filed*, but for the inappropriate purpose of evaluating legal arguments  
12 contained therein. As a general rule, “documents are judicially noticeable only for the  
13 purpose of determining what statements are contained therein, not to prove the truth of  
14 the contents or any party’s assertion of what the contents mean.” *United States v. S.*  
15 *Cal. Edison Co.*, 300 F. Supp. 2d 964, 975 (E.D. Cal. 2004). Therefore, even though a  
16 document may be a matter of public record, “[a] court may not take judicial notice of  
17 one party’s opinion of how [the document] should be interpreted.” *Id.* at 974. Here,  
18 Plaintiffs are seeking judicial notice not merely of the fact that the *Smiley* record was  
19 filed, but also their *interpretation* of the *Smiley* record as somehow inconsistent with the  
20 positions advanced by VeriSign and NSI in this action. Plaintiffs’ request is improper,  
21 and should be rejected.

22 Second, judicial notice of the *Smiley* record would be improper because the  
23 record is irrelevant to any issue raised by VeriSign and NSI’s Motion to Dismiss the  
24 First Amended Complaint. Even if a document is otherwise in a form proper for  
25 judicial notice, courts decline to take judicial notice if the document is not relevant to  
26 the subject dispute. *E.g., Pac. Gas & Elec. Co. v. Lynch*, 216 F. Supp. 2d 1016, 1025-  
27 26 (N.D. Cal. 2002) (declining to take judicial notice of stipulated judgment and  
28 settlement documents in related action on relevancy grounds); *Plevy v. Haggerty*, 38 F.